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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,908	08/20/2001	Itsuhei Ogata	P 281565 ND, NJ/ND-F407-U	4349
23117	7590	11/26/2003	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			KOPEC, MARK T	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,908

Applicant(s)

OGATA ET AL.

Examiner

Mark Kopec

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 and 16-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 7-12, 16-44 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 34, drawn to a thermistor device comprising (M1M2)O3·Y2O3, classified in class 252, subclass 518.1.
- II. Claims 7-12 and 28, drawn to a thermistor device comprising (M1M2)O3·Al2O3·Y2O3, classified in class 252, subclass 520.5.
- III. Claims and 29-33, drawn to a method for manufacturing the thermistor comprising (M1M2)O3·Y2O3, classified in class 423, subclass 111+.
- IV. Claims 16-21, drawn to a method for manufacturing the thermistor of claim 7, classified in class 423, subclass 21.1+.
- V. Claims 22-27, drawn to a method of manufacturing a thermistor device, classified in class 423, subclass 1+.
- VI. Claims 35-44, drawn to a thermistor device and method of making, classified in class 338, subclass 22R.

Note the examiner believes that claim 41 should depend from claim 40. Clarification is required.

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The inventions are distinct, each from the other because of the following reasons:

The inventions Groups I and II are drawn to two patentably distinct thermistor device compositions. The addition of Y2O3 in Group II patentably distinguishes the compositions from the (M1M2)O3·Al2O3 materials of Group I. Additionally, the searches required for these distinct groups are not coextensive.

The inventions of Groups III, IV and V are drawn to patentably distinct processes for producing thermistor devices. Each distinct group is drawn to specific process each requiring process steps different and distinct from the other groups. Additionally, the searches required for these distinct groups are not coextensive.

Inventions of Group III and Group I are related as process of making and product made. Inventions of Group IV and Group II are also related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the products of Groups I and II may be made by the process disclosed by

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applicant in Groups IV or V. As stated above, these inventions are distinct from the processes disclosed in Groups III and IV.

Inventions of Group I and Groups (IV, V and VI) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Group I is directed to thermistor devices comprising (M1M2)O3·Al2O3 while Groups IV, V and VI are each drawn to thermistor devices (and methods) which are generic or made of patentably distinct compositions.

Inventions of Group II and Groups (III, V and VI) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Group II is directed to thermistor devices comprising (M1M2)O3·Al2O3·Y2O3 while Groups IV, V and VI are each drawn to thermistor devices (and methods) which are generic or made of patentably distinct compositions.

Inventions of Group VI and Groups (III, IV and V) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have

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different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, Group VI is directed to thermistor devices comprising an anti-reducing coating while Groups III, IV and V are each drawn to thermistor devices (and methods) which are generic or made of patentably distinct compositions.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and their different classification, and because the searches required for the distinct groups are not coextensive, restriction for examination purposes as indicated is proper.

A telephone call was made to Mr. Larry Nixon on 11/15/03 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Kopec whose telephone number is (703) 308-1088. The examiner can normally be reached on Monday-Thursday from 7:30 AM - 6:00 PM.

If reasonable attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached on (703) 308-4708.

The official fax phone numbers for this Group are (703) 305-7718 and 305-3599 (for after-final submissions).

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.


Mark Kopec
Primary Examiner

Mark Kopec
November 24, 2003